Supreme Court, U.S.
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No. 91-1411

In The

Supreme Court of the United States

October Term, 1991

WHOLESALE AND RETAIL FOOD DISTRIBUTION LOCAL 63, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

vs.

JAMES BENDER, HARRY RODRIGUEZ, CLYDE WALLACE, DAN DOUGLASS, JACK DOUGLASS, HAROLD LARSEN, HETTI COLE, E. ELOISE HARRIS and JAMES BROWN,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Plaintiffs James Bender, Jack Douglass, Harry Rodriguez, James Brown, Hetti Cole, Daniel Douglass, Eloise Harris, Harold Larsen and Clyde Wallace hereby oppose the Petition for Certiorari. They also respectfully remind the Court that the decision below is an unreported memorandum which has no precedential effect. In addition, at least one of the issues raised by the petition were not raised in petitioner's opening brief, precluding the exercise of certiorari jurisdiction.

Petitioner Wholesale and Retail Food Distribution Local 63, International Brotherhood of Teamsters ("Local 63), has accurately attached and described the opinions below, the jurisdiction of the Ninth Circuit; the basis upon which it seeks to invoke the jurisdiction of this Court, and the statutes involved. However, petitioner's statement of the facts lacks important information and in this regard, the Court is respectfully referred to the District Court's Memorandum and Order for Judgment Notwithstanding Verdict or, In the Alternative, for a New Trial Motion and for Attorneys' Fees and Other Relief set forth as Appendix "A" to the petition, specifically at page 3A-8A, thereof. In addition, opposition will set forth additional information below.

RESTATEMENT OF THE CASE

In 1985, plaintiffs attempted to attend a nomination meeting of the Local and to nominate themselves to run against the incumbent officers. They were attacked by

individuals who were supporters of the incumbent officers. The attackers were wearing blue t-shirts bearing the logo "Teamsters Re-Elect Bob Marciel and Slate, Local 63" which were given to them by the Local in its campaign to reelect its incumbent officers. Before the meeting, a reelection committee was formed, consisting of officers and business agents of the Local, all of whom were appointed to their posts as business agents by the incumbent secretary treasurer. The committee amassed a campaign fund which was spent on buses to transport Teamsters from distant areas, t-shirts and "refreshments." It organized a meeting at which it was expected that as many as 2000 members would attend in a hall capable of only holding 450. The Local permitted beer drinking in the hiring hall parking lot and on the buses. T-shirts with the reelect logo, were distributed in the parking lot. As plaintiffs approached the hiring hall to nominate themselves to run against the incumbent officers, they were attacked by a mob of individuals wearing the t-shirts. One of the plaintiffs was stabbed in the back with an ice pick, another was choked while others were kicked in their heads and bodies until they were bloodied. They all feared for their lives. Because plaintiffs were unable to reach the meeting, the incumbent officers were automatically reelected to office. The Local failed to investigate the attacks. Instead, it publicly congratulated itself in an article in the *California Teamsters Newspaper.* Plaintiffs protested the attack to the International, but the Local claimed it was not a sufficient assertion of internal union remedies. Ultimately, a second nomination meeting was held, but plaintiffs did not attend, their slate having been disbanded because of the attack. This action followed.

REASONS FOR DENYING THE WRIT

I

THE INSTANT CASE IS NOT APPROPRIATE FOR THIS COURT TO CONFIRM OR DENY AVAILABILITY OF PUNITIVE DAMAGES UNDER SECTION 101(a)(1) OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT BECAUSE THE JURY MAY HAVE MADE ITS AWARD OF PUNITIVE DAMAGES BASED UPON THE PENDENT STATE CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The jury was properly given general verdicts and did not specify upon which of several theories they made their award of damages. The jury found the Local liable for violation of the Labor Management Reporting and Disclosure Act ("LMRDA") and the state tort of intentional infliction of emotional distress and awarded a sum of punitive damages. The general verdict did not specify whether the award of punitive damages was based upon the LMRDA or intentional infliction of emotional distress. *See,* Memorandum Decision, Ninth Circuit, p. 3B of Exhibit "B" of petition. Now, for the first time, petitioner raises an argument that there is question whether the LMRDA supports punitive damages. Below, the Local merely complained that its jury instruction dealing with punitive damages under the LMRDA was erroneously excluded. It did not present to the court of appeal, the question it now raises.

Moreover, the jury could have made their award of punitive damages on the state tort claim rather than the LMRDA claim. Such a result would make it unnecessary and, in fact, inappropriate for this Court to decide

whether punitive damages are available under § 101(a)(1) of the LMRDA.

Petitioner makes reference to *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980), and states that, " . . . at least one circuit has interpreted the majority opinion to mean the rational for a *per se* rule prohibiting the award of punitive damages to a successful union member in a breach of duty of fair representation action applies equally to a case such as this when a union member successfully sues a union for violating Title I of the LMRDA." (Petition, p. 5.) However, *Shimman* upheld an award of punitive damages. In so doing, the opinion discussed *McGraw v. United Association of Journeymen and App. of Plumbing*, 341 F.2d 705, 706-7 (6th Cir. 1965). It observed that *McGraw* suggested that punitive damages were unavailable. However, the *Shimman* Court correctly observed that the underlying conduct presented in *McGraw*, in the pendent claims, was also a tort under state law, which supported punitive damages. Therefore, it was unnecessary for the court in *Shimman* to address the viability of *McGraw*.

In the present case, it is not appropriate to examine the issue of availability of punitive damages under the LMRDA, because the jury could have made its award under the state tort claims.

II

NO DUE PROCESS QUESTION IS PRESENTED BY THE PETITION

The petition asserts that the punitive damage award was more than the Local's net worth of $200,000 and is therefore, violative of due process. This argument fails

for several reasons. First, the Local's claim that it only had a net worth of $200,000 is inaccurate. The jury was given the Local's most recent LM-2 Report, filed by the Local pursuant to the LMRDA and Title 7 of the Civil Service Reform Act as Trial Exhibit No. 24, a copy of which will be lodged with the clerk of this Court. The evidence showed that at the end of the applicable reporting period the Local had $200,000 in the bank after paying $970,000 to the International Brotherhood of Teamsters; $1.5 million dollars in salaries to officers and employees; and $400,000 in a legal settlement in an unrelated matter. These sums were deducted from the $4.7 million dollars that the Local collected in that year alone. Accordingly, the argument that $200,000 is the net worth of the Local and the amount against which the punitive damage award is to be measured, is misleading. As the circuit court's memorandum observed in this case, " . . . annual income is of greater significance than the bank balance." (Petition Appendix "B," p. 8.)

Moreover, net worth, the mechanical substraction of debts from assets, is only one measurement of financial condition. The finders of fact should never be limited to net worth as the basis upon which to decide punitive damages. Were it otherwise, a corporate defendant held liable for intentional torts committed by its president and sole shareholder, could escape substantial punitive damages by arguing that its net worth was minimal when the net worth was reduced by the exorbitant salary of the president and sole shareholder who directed the commission of the very tort for which the corporation was held liable.

This Court has already examined and upheld punitive damages against a due process challenge. *Pacific Mutual Life Ins. Co. v. Haslip*, ___ U.S. ___, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991). There, this Court examined Alabama's punitive damage system as well as the instruction given to the jury. The court observed that the jury was instructed that punitive damages were not to compensate, but to punish and deter similar conduct. Similarly, in the instant case, the jury was instructed that the purpose of punitive damages is to punish and set an example or warning to others not to engage in similar conduct. (Petition Appendix "C".)

In *Pacific Mutual*, the court noted that the Alabama instruction required the jury to take into account the degree of the wrong and the necessity to prevent the occurrence of similar conduct. (113 L.Ed., at p. 21.)

The instruction in the instant case, advised the jury that it was not compelled to award punitive damages, but whether or not to do so was within its exclusive province and such an award, if to be given, was to be fixed "with calm discretion and sound reason" and not to be awarded out of sympathy, bias or prejudice. (Petition Appendix "C".)

Interestingly, in *Pacific Mutual*, there was no evidence of defendant's wealth presented to the jury pursuant to Alabama law. Yet, due process was complied with. In contrast, in the instant case, the jury was furnished with detailed information concerning the financial condition of the Local.

Accordingly, having decided *Pacific Mutual v. Haslip*, there is no reason for this Court to revisit the issues raised therein or raised by this petition.

III

THE UNPUBLISHED MEMORANDUM AWARDING ATTORNEYS' FEES IS CONSISTENT WITH THE RULINGS OF THIS COURT AND THE OTHER COURTS OF APPEALS

This Court has held that the award of attorneys' fees under § 102 of the LMRDA is clearly within the equitable power of the federal courts. *Hall v. Cole*, 412 U.S. 1, 9 (1973). This Court specifically announced that an award of counsel fees to a successful plaintiff in an action under § 102 of the LMRDA, falls squarely within the traditional equitable power of federal courts to award such fees whenever overriding considerations indicate the need for such a recovery. *Hall*, 412 U.S. at 8. (Citing, *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970). The Court has held that attorneys' fees are allowable either when (1) the opposing party acted in bad faith or (2) the litigation performed a valuable service for the Union and its members. *Bise v. Int'l Bro. of Electrical Wkrs.*, 618 F.2d 1299, 1306 (9th Cir. 1979). The phrase, "valuable service" is synonymous with substantial benefits. *Southerland v. Int'l Longshoremen's and Warehousemen's Union, Local 8*, 845 F.2d 796, 799 (9th Cir. 1987). As in *Bise*, the trial court in the instant case found, and the circuit court upheld, the award on both grounds. In the language of *Mills*, the lower court's discussion of the fees indicated that it determined that overriding considerations indicated a need for such recovery. More importantly in this case, the

decision of the Ninth Circuit is unpublished and is not precedent. If the attorneys' fees issues are indeed significant and need resolution, they will arise again, but in a published decision. Absent that, the Court should not exercise its certiorari jurisdiction.

A. BAD FAITH

The trial court found bad faith both in the conduct which gave rise to the claim, and in the conduct of the lawsuit. The trial court found that bad faith was established by the jury's finding of intentional interference with free conduct of a union election through creation of an environment at the nomination meeting openly hostile to the expected opposition. (Petition, App. "A28".) Petitioner asserts that neither the lower court nor the Ninth Circuit concluded that the Local engaged in bad faith misconduct after the assaults. (Petition, p. 19, fn 8.) This is incorrect. The trial court considered the assaults and the manner in which Local 63's management behaved afterwards. That conduct appeared calculated to reinforce suspicions that the officers might have been responsible for the actual beatings. (Petition Appendix, p. 28.) Moreover, the evidence establish that when the Local announced a second nomination meeting, it withheld the true reasons why certain individuals did not attend the first meeting. The notice to the membership smacked of bad faith. It wrongly took credit for advancing the democratic processes. It advised the membership that certain individuals, who did not attend the nominations, "apparently felt they couldn't gain access in a timely manner to the meeting." (Opposition Appendix, "A".) The Local engaged in cover-up. Obviously, the plaintiffs did not

"feel that they could gain access." They were beaten by a mob, which was encouraged by the Local. This notice followed on the heels of a congratulatory article which the Local published in the *California Teamsters Newspaper*, urging the officers to "keep up the good work."

The trial court also found that the litigation conduct of defendant also indicated bad faith. It had reference to denials by the officers of any plan of intimidation. Those denials were rejected by the jury's verdicts. The rejection implies a finding of untruthfulness. (Petition Appendix, "A29.")

B. COMMON BENEFIT

Plaintiffs asked the district court to supervise the next nomination meeting of the Local and to require that the Local mail to its members a newspaper article which described, among other things, the jury's verdict in the case. (Petition Appendix, p. 26.)

The district court declined to do so, but concluded that the damage award was specifically intended to serve as a deterrent to future unlawful interference in union elections by the union or union management. The court stated its belief that the verdict was well-directed to such result. (Petition Appendix, pp. 27-28.)

The trial court thus correctly found that plaintiffs' case conveyed a substantial benefit to the members of the union. The benefit is a clear vindication of the democratic rights of the members in the Local.

Petitioner incorrectly asserts that the case is not consistent with *Shimman v. Intern, Union of Operating Eng.*,

Loc. 18, 744 F.2d 1226 (6th Cir. 1984). The facts of *Shimman* are not similar to those of the instant case.

The facts of *Shimman* are more specifically set forth in *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980). In *Shimman*, although there had been disputes with dissidents and a dissident sued because he was beaten at a union meeting, the result of the action did not produce the likelihood of benefits to all members by a change in union management.

In contrast, in the present case, the scheme of the officers prevented participation in elections by anyone who dared to challenge the establishment. The scheme was eliminated by the award.

As the district court observed and the circuit court confirmed, the damage awarded benefitted all of Local 63's members by deterring the officers from engaging in such conduct. (Petition Appendix, pp. 8-9.) The benefit was broad-based unlike that in *Shimman*.

The jury's verdict established that the incumbent management had unlawfully interfered with the conduct of a free union election. The punitive damage award was specifically directed to providing a strong deterrent to any repetition of that conduct. This clearly benefits the Union by protecting its democratic process. Consistent with this Court's ruling in *Cole*, the district court based its award on bad faith conduct giving rise to the claim; bad faith conduct subsequent to the actual assaults, and bad faith conduct in the course of the litigation. It also based its award on common benefit. Given the multiple bases for its award, it would be inappropriate to use this case to

delineate issues relating to common benefit as urged by the petition.

The result below is consistent with the holding of the courts which have addressed the issues. Moreover, the unpublished status of the opinion is reason enough for this court to deny certiorari.

CONCLUSION

For the foregoing reasons, nothing is presented by this petition which warrants grant of certiorari and the Court should deny the petition.

DATED: March 30, 1992

Respectfully submitted,

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APPENDIX "A"

A1

WESTERN CONFERENCE of TEAMSTERS (SEAL)

BULLETIN

Wholesale and Retail Food Distribution,
Teamsters Local No. 63

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NOTICE NOTICE NOTICE

This Local Union has always prided itself on being a successful Local Union because of the interest and involvement of its entire membership. Our strength in collective bargaining stems from the interest, openness and democracy of this Local Union.

Although the incumbent officers of Local 63 were re-elected by white ballot at the regularly scheduled nomination meeting, this office petitioned the International Union for permission to re-conduct the nominations.

The reason: It came to my attention following the nominations that certain individuals who didn't attend the nominations apparently felt they couldn't gain access in a timely manner to the meeting.

Again, the officers of this Local Union, which are proud of the fact that this union is strong and viable as it is because of our democtatic [sic] practices, wholeheartedly desired to address the whole question by trying to again

hold the nominations meeting. The International Union acquiesced to our request to hold another nominations meeting.

> Nominations will be on January 4, 1986 at 12:00 Noon at the Teamster Building, located at 1616 West 9th St., L. A., Room #105, for the officers of Secretary-Treasurer, President, Vice-President, Recording-Secretary and three (3) Trustee.

Fraternally,

/s/ Robert E. Marciel
Robert E. Marciel
Secretary-Treasurer
REM:mh